



भारत का राजपत्र The Gazette of India

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No. 51] NEW DELHI, DECEMBER 15—DECEMBER 21, 2019, SATURDAY/AGRAHAYANA 24—AGRAHAYANA—30, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मंत्रालय

नई दिल्ली, 6 नवम्बर, 2019

का.आ. 2164.—केन्द्रीय सरकार (संघ के शासकीय प्रयोजनों के लिए) राजभाषा नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में, विदेश मंत्रालय के क्षेत्रीय पासपोर्ट कार्यालय, आईएसबीटी मुख्य भवन, भवन, मेजेनाइन फ्लोर, सांची दुग्ध संघ, होशंगाबाद रोड के सामने, हबीबगंज, भोपाल मध्य प्रदेश-462024 को जिसके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. क्यू/हिंदी/621/21/2018]

सजीव बाबु कुरूप, संयुक्त सचिव

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 6th November, 2019

S.O. 2164.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for the official purpose of the Union) Rules, 1976, the Central Government, hereby notifies the Regional Passport Office, I.S.B.T. Main Building, Mezzanine Floor, In front of Sanchi Dugdh Sangh, Hoshangabad Road, Habibganj, Bhopal Madhya Pradesh-462024 of the Ministry of External Affairs, more than 80% staff whereof have acquired working knowledge of Hindi.

[No. Q/Hindi/621/21/2018]

SAJEEV BABU KURUP, Jt. Secy.

विद्युत मंत्रालय

नई दिल्ली, 10 दिसम्बर, 2019

का.आ. 2165.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन एनटीपीसी लिमिटेड के पूर्वी क्षेत्र-II मुख्यालय, तीसरा तल, ओएलआईसी बिल्डिंग, एन-17/2, नयापल्ली यूनिट-8/17/2, 8, भुवनेश्वर-751012 (ओडिशा), जिसके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

[सं. 11011/9/2017-हिंदी]

अनिरुद्ध कुमार, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 10th December, 2019

S.O. 2165.—In pursuance of Sub Rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notify the Eastern Region-II Headquarter, 3rd Floor, OLIC Building, N-17/2, Nayapalli Unit-8/17/2, 8, Bhubaneswar-751012 (Odisha) of NTPC Ltd. under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi.

[No.11011/9/2017-Hindi]

ANIRUDDHA KUMAR, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 9 दिसम्बर, 2019

का.आ. 2166.—केंद्र सरकार, कारखाना अधिनियम, 1948 (1948 का 63) की धारा 2 के खंड (ढ) के प्रथम परंतुक के खंड (iii) द्वारा प्रदत्त शक्तियों का अनुसरण करते हुए एतद्वारा निम्न तालिका के कॉलम (3) में निर्दिष्ट अधिकारियों को उक्त तालिका के कॉलम (2) में निर्दिष्ट एनएलसी इंडिया लिमिटेड (एनएलसीआईएल), जिसका पंजीकृत कार्यालय प्रथम तल, नं.8, मेयर सत्यमूर्ति रोड, एफएसडी, भारतीय खाद्य निगम, एग्मोर कॉम्प्लेक्स, चेटपेट, चेन्नई – 600031 में है, के संबंधित कारखाने या वर्कशॉप का “अधिष्ठाता” नियुक्त करती है, अर्थात:-

क्र. सं.	कारखाने का नाम (सोलर पावर प्लांट)	अधिष्ठाता के रूप में नियुक्त किए जाने वाले अधिकारी का पदनाम
1	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.- चेल्लीयानाल्लुर	
2	एनएलसी इंडिया सोलर पावर प्लांट, 50 मे.वा.- एट्टनकुलम	
3	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.- थोप्पालाक्करई	
4	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.-सेथुपुरम	
5	एनएलसी इंडिया सोलर पावर प्लांट,	

	100 मे.वा.- सामीनाथम	उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
6	एनएलसी इंडिया सोलर पावर प्लांट, 50 मे.वा.- कडामंगलम	
7	एनएलसी इंडिया सोलर पावर प्लांट, 109 मे.वा.- अवथनडई, रामनाथपुरम जिला	
8	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.- कमुथी, रामनाथपुरम जिला	
9	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.- मारंथी, तिरुनेलवेली जिला	
10	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.- पुदुर, तिरुनेलवेली जिला	
11	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.- थेरकुपट्टी, तिरुनेलवेली जिला	
12	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.- पुलंगल, विरूधूनगर जिला	
13	एनएलसी इंडिया सोलर पावर प्लांट, 100 मे.वा.- ओणमकुलम, तूतिकोरिन	
14	नेवेली उत्तर प्रदेश पावर लिमिटेड, (3 x 660 मे.वा.) (एनयूपीपीएल), घाटमपुर, उत्तर प्रदेश	

2. एनएलसी इंडिया लिमिटेड के अध्यक्ष-सह-प्रबंध निदेशक एतद्वारा संबंधित पदों पर ऐसे अधिकारियों को नाम से नामांकित करने के लिए प्राधिकृत हैं, जो कारखानों के अधिष्ठाताओं के रूप में पदनामित हैं, जैसा कि ऊपर बताया गया है।

[फा. सं. 38026/1/2013-सीए II]

अल्का शेखर, अवर सचिव

MINISTRY OF COAL

New Delhi, the 9th December, 2019

S.O. 2166.—In pursuance of the powers, conferred by clause (iii) of the first proviso to clause (n) of Section 2 of the Factories Act, 1948 (63 of 1948), the Central Government hereby appoints officers specified in column (3) of the Table below as “Occupier” of the respective factory or workshop of NLC India Limited (NLCIL), specified in column (2) of the said Table having its registered office at First Floor, No. 8, Mayor Sathyamurthy Road, FSD, Egmore Complex of Food Corporation of India, Chetpet, Chennai-600031, namely:—

Sl. No.	Name of the Factory (Solar Power Plant)	Designation(s) of Officer to be appointed as Occupier
1	NLC India Solar Power Plant, 100 MW-Chelliyannallur	
2	NLC India Solar Power Plant, 50 MW-Ettankulam	
3	NLC India Solar Power Plant, 100 MW-Thoppalakkarai	
4	NLC India Solar Power Plant,	

	100 MW-Sethupuram	Deputy General Manager/ General Manager / Chief General Manager
5	NLC India Solar Power Plant, 100 MW-Saminatham	
6	NLC India Solar Power Plant, 50 MW-Kadamangalam	
7	NLC India Solar Power Plant, 109 MW-Avathandai, Ramanathapuram Dist.	
8	NLC India Solar Power Plant, 100 MW-Kamuthi, Ramanathanpuram Dist.	
9	NLC India Solar Power Plant, 100 MW-Maranthi, Tirunelveli Dist.	
10	NLC India Solar Power Plant, 100 MW-Pudur, Tirunelveli Dist.	
11	NLC India Solar Power Plant, 100 MW-Therkupatti, Tirunelveli Dist.	
12	NLC India Solar Power Plant, 100 MW-Pulungal, Virudhunagar Dist.	
13	NLC India Solar Power Plant, 100 MW-Onamakulam, Tuticorin.	
14	Neyveli Uttar Pradesh Power Limited, (3 x 660 MW) (NUPPL), Ghatampur, Uttarpradesh.	

2. The Chairman-cum-Managing Director of NLC India Limited is hereby authorized to nominate by name such officers to the respective positions, who are designated as occupiers of the factories, as indicated above.

[F. No. 38026/1/2013-CA II]

ALKA SHEKHAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 12 दिसम्बर, 2019

का.आ. 2167.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम के पंचाट (संदर्भ सं. 26/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.12.2019 को प्राप्त हुआ था।

[सं. एल-12011/09/2014-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 12th December, 2019

S.O. 2167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*, ERNAKULAM as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank, and their workmen, received by the Central Government on 12.12.2019.

[No. L-12011/09/2014-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM-LABOUR COURT,
ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 18th day of October 2019, 26 Asvina 1941)

ID No. 26.2014

Workman : The Assistant Secretary,
 Syndicate Bank Staff Association,
 49/746, Krishna Karama Road,
 Elamakkara, Kochi,
 Ernakulam - 682026

By Adv.K. Shri Hari Rao

Management : The General Manager,
 Syndicate Bank, Regional Office,
 Kochi, Ernakulam-31.

By Adv.M.P.Ashok Kumar

This case coming up for final hearing on 26-8-2019 and this Tribunal-cum-Labour Court on 18-10-2019 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/09/2014-IR(B-II) dated 4-4-2014 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is

“Whether the action of the Syndicate Bank management not to include the temporary period of service of Shri K.V.Damodaran as part of his regular service is correct and whether it has amounted to unfair labour practice by violating the provisions of Bipartite settlement and guidelines issued by the Bank? What relief the workman/ Union is entitled to?”

3. The Union/Association filed their claim stating that as per the Bipartite settlement and guidelines issued by the bank from time to time, the temporary service of the workman is reckoned as regular service so far as the service of an Attender is concerned. Because of non-inclusion of his temporary service the workman is deprived of many benefits including pension and pension benefits. The service of Sri. Damodaran in the post of Attender is regularized at the age of 51 and as per the service conditions he had to retire at the age of 60 and for getting pension, as per Banking Pension Rules, a minimum service of 10 years is required. Because of this action by the management the workman Sri.Damodaran who was working in the bank from 1988 is denied the benefit of pension. Though the temporary service is considered for the purpose of gratuity, the same is denied for the purpose of pension.

4. The management filed written statement denying the allegations in the claim. According to the management Sri. K.V. Damodaran is presently working as Attender in their currency chest at Kaloore, Kochi. Before absorbing as regular Attender he had worked as temporary Attender intermittently during the period between 1987 and 2008 at Uduma branch of the bank. In the appointment order issued to Sri.K. V. Damodaran, while regularising his service, it was specifically mentioned that he will be on probation for a period of 3 months from the date of joining, taking into account the service rendered by him on temporary basis for more than 3 months in the post of Attender. As per Clause 20.8 of Bipartite Settlement the temporary employment is taken into account as part of his probationary period. However his temporary service was taken into account for the limited purpose of calculation of gratuity. As per Para 20.7 of Bipartite Settlement dt.19.10.1966, a temporary employee means a workman who has been appointed for a limited period of work which is essentially of a temporary nature who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes a workman other than a permanent workman who is appointed in a temporary vacancy caused by absence of a particular permanent workman. As per Clause 20.8 of 1st Bipartite Settlement a temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of 3 months during which the bank shall make arrangements for filling up the vacancy permanently. If such temporary workman is eventually selected for filling up the vacancy, the period of such temporary employment

will be taken into account as part of its probationary period. Clause 20.8 only provides that in the case of a workman satisfying the condition, the period of his probation will be reduced to the extent of his temporary service not exceeding 3 months. This clause does not provide for inclusion of the employees temporary service in his regular service. The workman in this case is extended the benefit of Para 20.8 of Bipartite Settlement by reducing the probationary period by 3 months. The clause does not mean that if for some reason the period of such temporary employment exceeds 3 months he will be entitled to get the benefit of regular appointment for further period exceeding 3 months. The workman was engaged temporarily on casual basis and his engagement was not against any regular or permanent vacancy. There after his services were engaged as temporary Attender against a permanent regular vacancy from 1998 onwards. The management absorbed the temporary employee into permanent service vide order dt.02.03.2009. No prejudice is caused on account of non-inclusion of temporary period as part of the regular service and all eligible benefits will be extended without any exemption.

5. The Union filed rejoinder reiterating the averments in the claim statement and affirming that the circular letter no. 0031 /SPC/IRE/W dt.20.08.1990 issued by head office of the bank to all zonal Heads that the temporary service is to be counted as regular service for all purposes of service benefits was ignored by the management.

6. The Union examined WW1 & WW2 and marked Exbt. W1 to W3. The management examined MW1. After the completion of evidence, the workman produced 3 documents to be marked in the proceedings. The same was seriously objected to by the management. On a perusal of these documents produced by the union, it is seen that these are copies of documents maintained by the management or issued by the management, the original of which are available with the management. Hence the objection of the management was over ruled and the documents were marked as W4 to W6 in the proceedings.

7. On completion of the pleadings the following issues are framed for final adjudication.

1. Whether the denial of the management to include the temporary service period of Sri.K.V Damodaran as part of regular service is correct ?
2. Whether it amounts to unfair labour practice and in violation of provisions of Bipartite Settlement and guidelines issued by the bank?
3. Relief and cost.

8. Issue no. 1 & 2

There is no dispute regarding the facts of the case. The workman Sri.K.V Damodaran was working as a temporary Attender with the management during the period from 1987 to 1997 and worked as temporary Attender against permanent vacancy from 1998 to 2008. He was appointed on regular basis w.e.f. 02.03.2009 at the age of 51 years and retired from the service of the bank on 30.11.2017 on superannuation. His initial service from 03.02.1987 to 1998 is treated by the management as totally casual employment of daily wages. His service from 1998 to 2008 is treated as temporary service against permanent vacancy. There is no dispute regarding the fact that the workman was appointed against a permanent vacancy from 1998 onwards. Exbt. W5 dt.13.3.2018 issued by management bank clearly states that the workman was working as temporary Attender with the management bank during the period from 03.02.1987 to 01.03.2009 and he was made permanent Attender w.e.f. 02.03.2009, though the initial service of the workman from 03.02.1987 to 1997 is categorized as purely casual engagement. The management conceded that the workman was appointed as temporary Attender from 1998 against a permanent vacancy and he was attending the work of a regular Attender.

9. As per Para 10 of 5th Schedule of Industrial Disputes Act 1947, read with Sec 2(ra), to employ a workman as badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workman is an unfair labour practice. From the narration given above, the management engaged the services of the workman from 1987 to 2009 as temporary employee and after 20 years of his service he is regularized in the same cadre at the age of 51. Going by the above definition it is a clear case of unfair labour practice by the management against the workman.

10. The workman claimed the benefits of Clause 20.8 of Bipartite Settlement to see that the service benefits are extended to the workman from his appointment as temporary workman against permanent vacancy in 1998. The management quoted the same provision to deny the benefits to the workman. Clause 20.8 of 1st Bipartite settlement reads as under :

“A temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of 3 months during which the bank shall make arrangements for filling up the vacancy permanently. If such temporary workman is eventually selected for filling up the vacancy, the period of such temporary employment will be taken in to account as part of his probationary period.”

According to the management this clause in the Bipartite Settlement do not contemplate a situation wherein the temporary service of a workman is extended beyond 3 months. According to the counsel for the union, the management vide W1 Circular dt.20.08.1990 to all zonal offices clarified that

“If the employees had worked temporarily in the permanent vacancy in the branch/office but with breaks, and was absorbed as a probationer in the same vacancy in the branch, the date of joining service will be preponed to the extent of the total number of days of service rendered on temporary basis in the permanent vacancy in the branch/office, and the increment date falling due in 1990 and thereafter will be re-fixed. No other benefits are admissible.”

Further the Union also produced Exbt.W2 to show that there are precedents wherein the service benefits were re-fixed under a settlement under Sec 12.3 of Industrial Disputes Act wherein the temporary service of an employee was taken into account after regular appointment for the purpose of extending all the service benefits. The management conceded during argument that vide Circular dt.14.05.2005, the management has agreed to extend the benefits of gratuity for the period of continuous service rendered by temporary employees before the date of regularization.

11. It is very difficult to accept the logic in the interpretation of Clause 20.8 of Bipartite Settlement by the management that the provision contemplates absorption of only 3 months of temporary service when a temporary employee is regularized. The provision clearly states that the management shall take action to fill the vacancy permanently within 3 months time. In case the management fails in filling up the vacancy beyond 3 months the benefit shall invariably be extended to the workman till the vacancy is filled up through regular appointment or by regularization. In the instant case the workman continued to be in service purely on temporary and casual basis for 10 year and the next 10 years he was appointed on temporary basis against a permanent vacancy. Hence it is not fair and proper on the part of the management to decline the benefits of Pension to the workman from the date he is appointed as temporary employee against a permanent vacancy.

Hence issue no.1 and 2 are decided in favour of union and against the management.

12. **Issue no. 3**

In view of the findings on issue no. 1 & 2, the workman Sri.K.V Damodaran is entitled to get the temporary period of service from 1998 included as part of his regular service and he is entitled to get all the consequential benefits.

Hence an award is passed holding that the action of Syndicate management not to include the temporary period of service from 1998 of Sri.K.V Damodaran as part of his regular service is not correct and amounted to unfair labour practice by violating the provisions of Bipartite Settlement and the guidelines issued by the bank. The workman is entitled to all the service benefits including pension taking in to account his temporary service against regular vacancy in 1998.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 18th day of October, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman -

WW-1 Shri K.S.Bhat on 20-5-2016

WW-2 Shri K.V.Damodaran on 14-2-2019

Witness for the Management -

MW-1 Shri Kiran Kumar. H on 16-7-2019

Exhibits for the workman -

W-1 - Circular dated 20-8-1990

W-2 - Settlement dated 6-1-94 between Union and Mgt.

W-3 - Part A of Annexure B showing scale of wages to part time employees

Exhibits for the Management:-

नई दिल्ली, 12 दिसम्बर, 2019

का.आ. 2168.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहटी के पंचाट (संदर्भ सं. 03/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.12.2019 को प्राप्त हुआ था।

[सं. एल-39025/01/2019-आईआर बी-II]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 12th December, 2019

S.O. 2168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Guwahati* as shown in the Annexure, in the industrial dispute between the management of United Bank of India, and their workmen, received by the Central Government on 12.12.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B., Presiding Officer, CGIT-cum-Labour Court, Guwahati

Ref. Case No. 03 of 2019

In the matter of an Industrial Dispute between :-

Sh. Nipul Chandra Das, Sibsagar, Assam.

...Claimant/ Workman

-Vrs-

The Chief Manager (D & IR) & Disciplinary Authority,
United Bank of India, H.O., Kolkata, West Bengal

...O.Ps/Management

APPEARANCES

For the Workmen : Mr. B Kalita, Workman Counsel

For the Management : Mr. D.P.Paul, U.B.I., Pan Bazar, Guwahati

Date of Award: 20 11.2019

AWARD

1. On an application filed by the workman Nipul Chandra Das under Section 2A (2) of the Industrial Act, 1947, this reference was registered, Notice was issued to the management of the United Bank of India along with a copy of the claim application. In brief, the facts, according to the claim petition are as follows.

2. Workman Sri Nipul Chandra Das was appointed as part time Sweeper at Gourisagar Branch, Sibsagar, Assam on 01.07.2009 and on 01.04.2016 he was posted permanently as House Keeping-cum-Sub-Staff. It was further stated that on 26.10.2016 at 9 A.M the workman found that electrical Generator set inside the Bank premises was running. He stopped the Generator at 9-30 A.M. on apprehension that it might burn down but the Branch Manager blasted out at him and also insulted his physical disabilities. On the same date i.e. on 26.10.2016, the workman was asked to submit written explanation in the matter of a complaint made against him by the Branch Manager. According to the workman no document in regard to the complaint was forwarded to him along with the show cause notice. On 27.10.2016 the workman submitted an application before the AGM of the Bank for an enquiry against the Branch Manager for his indecent conduct and use of abusive language in regard to his physical disabilities. But without following the principle of Natural Justice the management issued order of suspension and the workman was suspended from his service on 31.10.2016. On 05.01.2016 charge sheet was issued to the workman and later on, certain documents were also forwarded to him. According to the workman all these documents were manufactured. The workman submitted his reply to the charge sheet stating that the charges are fabricated, exaggerated, distorted and concocted. The management having not been satisfied with the reply of the workman proceeded with the enquiry. The concerned workman was held guilty. The workman filed reply against the report of the Enquiry Officer as was asked by the management claiming that the enquiry Officer had taken biased and unjustifiable stand /view. On 31.05.2017 the management called for a personal hearing of the workman on the matter of proposed punishment. The personal hearing took place on 16.06.2017 at Bank Head Office

at Kolkata. In that regard paragraphs 15 & 16 of the claim application may be quoted. “15. *That in personal hearing on 16.06.17 at Bank’s Head Office, Kolkata, the applicant/workman stated that the incident (occurred on 26.10.2016) was a spur of the moment reaction (resulted into argument).* 16. *That the submission of the applicant/ workman made in personal hearing did not consider by the opposite party/ management and passed a final order of Dismissal from service vide letter dated 19.06.2017 with retrospective effect of suspension dated 31.10.2016.*” The concerned workman filed a reply dated 19.06.2017 but the Authority did not take into consideration the issues raised by him. Having failed to get justice in Domestic Enquiry and personal hearing, the Applicant/workman raised Industrial Dispute before the Regional Labour Commissioner (central), Guwahati and the aforesaid Authority called the proceeding from the management. Ultimately the concerned workman has brought this matter before this Tribunal under the provisions of Section 2A (2) of the I. D. Act, 1947.

3. The management of United Bank of India submitted written statement wherein it was admitted that the concerned worker was a sub-staff of the Bank. Without entering into any kind of details, the management stated in their W.S. that suspension order was passed after fair and disciplinary proceeding and that the allegation brought by the concerned workman against the management was ambiguous. They also denied any incident like running of Generator for a long period and use of abusive words to the concerned workman by the concerned Branch Manager. It was also stated that the Disciplinary Proceeding was initiated and conducted and concluded as per laid down procedures. Finally the management stated that the workman acknowledged his misconduct during the Departmental Proceeding subsequent to which action was taken against him.

4. On hearing of both sides the following issues were framed in the matter for decision.

- “1. Whether the Management of United Bank of India is justified in ousting the workman from his employment on 26.10.2016?
2. Whether the Management of United Bank of India is justified in suspending the Workman on 31.10.2016?
3. Whether the departmental enquiry against the workman was proper and fair?
4. Whether the dismissal from service awarded to the workman is proper and just?
5. If the answer of the above questions is yes or not, what relief the workman is entitled to?”

5. Workman side examined one witness, that is, the petitioner Sri Nipul Ch Das. However, though the witness made himself available for cross-examination, management side remained absent without any step on all subsequent dates. The management side neither cross-examined the workman witness nor examined any witness on their behalf. The workman side submitted a written argument. Let us therefore, examine and consider the evidence adduced by the only workman witness and the related documents.

6. It is interesting to note that apart from filing of the written statement, the management did not do anything in this matter. Neither they appeared to cross-examine the workman witness nor did they examine any witness. Hence, whatever evidence adduced by the workman has to be considered as the materials on record. It is a matter where, after holding a Departmental Enquiry the management dismissed the workman petitioner Nipul Ch. Das from his service. In his claim application the workman side stated that there was absolutely no reason to initiate a Departmental Enquiry against him and the way the Departmental Enquiry was held was also not in tune with the principles of Natural Justice. The workman raised an issue that he was victimized because he raised an issue of theft of 2 computers from the Store room of the Bank and the possibility of breaking down of the electrical generator within the Bank premises due to its extreme over use. In his evidence workman side exhibited a letter (Ext-C) written by him to the management informing that when he informed the concerned manager regarding theft of 2 computers from the Store room of the Bank and the possibility of breaking down of the electrical generator within the Bank premises due to its extreme overuse, he was abused by the Manager.

7. The written objection submitted by the management side appeared to be of routine nature and there was no specific aversion as to what actually transpired and they also did not submit the documents relating to the Disciplinary Proceeding drawn by the Bank to show that there was no violation of principles of natural justice. The Bank simply denied the allegations brought by the workman. The written objection submitted by the management side may be quoted as under :-

“WRITTEN OBJECTION OF THE MANAGEMENT

Most respectfully sheweth that:

1. *That the applicant was appointed as Part Time Sweeper (PTS) and elevated as House Keeping CUM Sub Staff according to eligibility and governed by the terms and conditions of service and of Bipartite Settlement.*

2. *That the applicant was served with suspension of order after fair and proper disciplinary proceeding.*
3. *That the allegations are ambiguous and nothing is accepted and everything denied except the matter in record and fact.*
4. *The incident of running of the generator is a matter of fact and denial is made of abusive and indecent words directed to the workman.*
5. *That proper procedure of explanation call was followed by the Management. The foul regarding issuance of notice of the procedure was not agitated earlier before appropriate authority. The present allegation is frivolous. The procedure in terms of discipline in service was followed.*
6. *That the statement is accepted and nothing is denied except the matter not on record and fact.*
7. *That the management followed the procedure as binding on the parties by virtue of the memorandum of settlement in vogue.*
8. *That the management proceeded in due process of course as fair and just.*
9. *That the allegation is denied except the matter in record and fact.*
10. *That the allegations hereafter are matter of fact and everything is on record.*
11. *That the workman himself acknowledged his misconduct and during disciplinary proceeding and actions have subsequently been initiated as per the terms of the Memorandum of Settlement."*

8. In para 11 of the written statement, the management stated that the workman himself acknowledged his misconduct during the disciplinary proceeding. But the management did not even produce a prima facie proof to bring home their claim far less to speak of proving the same as per law. However, in paragraphs 15 & 16 of the claim application the workman admitted that he told the authority that the incident took place on the spur of the moment. Since the management dismissed the workman from his services, it was the obligation of the management to produce the details of the disciplinary proceeding. But that was not done. In other words, the management held back all the details and awarded the workman with the highest penalty of "dismissal from service".

9. The issues framed in the matter are closely linked with each other. The gist of all the issues is whether the action of the management in terminating the services of the concerned workman was justified or not and if not justified, to what relief the workman is entitled. We have already seen that the conduct of the management in this proceeding was totally evasive. The workman, on the other hand, examined himself and proved that the punishment was imposed upon him without taking into consideration all the facts. In view of the above, this tribunal is constrained to hold that the action of the management in dismissing the workman from the service was not at all justified. The workman, therefore, appears to be entitled to the relief of reinstatement with all other consequential benefits.

10. In view of the above it is ordered that the management shall reinstate the workman to his job and shall also pay him back wages from the date of the dismissal within 60 days from the date of the receipt of the copy of this award. The reference is accordingly disposed of with the award as indicated above.

Given under the hand and seal of this Tribunal on this 20th day of November, 2019.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2019

का.आ. 2169.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना (बिहार) के पंचाट [संदर्भ सं. 02(सी)/2018] को प्रकाशित करती है जो केन्द्रीय सरकार को 12.12.2019 को प्राप्त हुआ था।

[सं. एल-12012/42/2017-आईआर बी-II]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 12th December, 2019

S.O. 2169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 02(C) of 2018] of the Industrial Tribunal, PATNA(BIHAR) as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 12.12.2019.

[No. L-12012/42/2017-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No. 02 (C) of 2018

Between the management of (1) The General Manager,(P) Union Bank of India, Central Office, 229-Vidhan Sabha Marg, Mumbai (2) The General Manager, Union Bank of India, Field General Manager Office, Gomti Nagar, Lucknow, (3) The Dy General Manager, Union Bank of India, Regional Office, 117/H-1/240, Pandu Nagar, Kanpur (U.P)-208005, (4) The Chief Manager, Union Bank of India, Birhana Road Branch, Kanpur (U.P) and Their workman Smt. Shanti Devi represented through The Secretary, Union Bank Staff Association (U.P) C/O- Union Bank of India, Main Branch, 24/53, Birhana Road, Kanpur (U.P)-20800.

For the management : Sri Ashish Ankur, Manager (HR)

For the Workman : None

Present: Vishweshwar Nath Mishra, Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dated- 22nd November, 2019

By the adjudication order no.-L-12012/42/2017-IR(B-II) dated- 28.03.2018 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as “ the Act”), the following dispute between (1) The General Manager,(P) Union Bank of India, Central Office, 229-Vidhan Sabha Marg, Mumbai (2) The General Manager, Union Bank of India, Field General Manager Office,Gomti Nagar, Lucknow, (3) The Dy General Manager, Union Bank of India, Regional Office, 117/H-1/240, Pandu Nagar, Kanpur (U.P)-208005, (4) The Chief Manager, Union Bank of India, Birhana Road Branch, Kanpur (U.P) and Their workman Smt. Shanti Devi represented through The Secretary, Union Bank Staff Association (U.P) C/O- Union Bank of India, Main Branch, 24/53, Birhana Road, Kanpur (U.P)-20800.for adjudication to this tribunal:-

SCHEDULE

- (1) “Whether posting on promotion of Smt Shanti Devi from Daftry to Clerical cadre to Hiran Nagar, Unnao Branch from Birhana Road Branch, Kanpur vide Memorandum dated 16.11.2015, is violation of Bipartite Settlement Circular No. 3712 dated- 08.03.1991?”
- (2) “If yes, whether the demand of the Union for her retention at Kanpur on promotion, legal and justified? And what relief is the workmen entitled to?”

2. After receipt of the reference / notification, notices were issued to the parties concerned through registered post. Management appeared before this tribunal but the workman did not appeared before this tribunal.

3. From perusal of the record, it appears that notices were issued by registered post to the workman. Despite several opportunities given to the workman she did not appear. On 06.02.2019 even after repeated call no body turned up on behalf of the workman, although the management was present. In the aforesaid facts & circumstances it appears that the workman has left with no interest at all in this case. So I pass “ No Dispute Award” in this case. This award is effected after date of publication and gazette.

This is my award accordingly.

Dictated & Corrected by me.

22.11.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2019

का.आ. 2170.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना (बिहार) के पंचाट [संदर्भ सं. 03(सी)/2015] को प्रकाशित करती है जो केन्द्रीय सरकार को 12.12.2019 को प्राप्त हुआ था।

[सं. एल-12011/97/2011—आईआर बी-II]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 12th December, 2019

S.O. 2170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03(C) of 2015) of the Industrial Tribunal, PATNA (BIHAR) as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 12.12.2019.

[No. L-12011/97/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No. 03 (C) of 2015

39 of 2012

Between the management of The Zonal Manager, Punjab National Bank, R.O. Chankya Place, R-Block, Patna (Bihar)-800001 and The Dy. General Manager, Punjab National Bank Staff Union (Bihar) Saboo Complex, 2nd Floor, Near Lawly Sen & Co. Exhibition Road, Patna (Bihar)-800001.

For the management : Sri Ravi Kumar, Sr. Manager Law.

For the Workman : Sri Umesh Kumar Verma, (General Secretary).
Sri B. Prasad, (President).

Present: Vishweshwar Nath Mishra, Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dated- 25th November, 2019

By the adjudication order No.-L-12011/97/2011-IR(B-II) dated- 21.06.2012 the Govt. of India,/Bharat Sarkar, Ministry of Labour / Shram Mantralaya New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of Section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as “ the Act”), the following dispute between the management of The Zonal Manager, Punjab National Bank, R.O. Chankya Place, R-Block, Patna (Bihar)-800001 and The Dy. General Manager, Punjab National Bank Staff Union (Bihar) Saboo Complex, 2nd Floor, Near Lawly Sen & Co. Exhibition Road, Patna (Bihar)-800001 for adjudication to the Central Govt. Industrial Tribunal-cum-Labour Court No.-2, Dhanbad. However, in the light of the Govt. of India// Bharat Sarkar, Ministry of Labour / Shram Mantralaya, New Delhi, letter vide order no.-Z-25025/4/2014-CLS-II dated- 07th May, 2014 the Central Govt. Industrial Tribunal-cum-Labour Court No.-2, Dhanbad transferred this case vide letter no.- 39/2012/1330 dt- 19th March, 2015 to State Industrial tribunal.

SCHEDULE

“Whether the action of the management of Punjab National Bank in not enrolling the workmen as pension optee who exercised their option for pension in response to circular No.- 1520 dated 15.11.1995 is legal and justified? What relief the workman concerned are entitled to?”

2. Earlier this case was pending in the court at Central Govt. Industrial Tribunal-cum-Labour Court No.-2 Dhanbad, and the same on the request made by the workman on 04.04.2013 was transferred to this tribunal, on the basis of the order passed by the Central Govt. Industrial Tribunal-cum-Labour Court No.-2, Dhanbad on 26.12.2014.

3. Record of this case was received in this court on 20.03.2015, after which notices were issued to both the parties. Pursuant to which they appeared before this tribunal. The statement of claim and written statement were not filed by the parties. But the parties left taking proper interest in this case. Although management appeared on few dates but the workman has left pairvi in this case since 27.11.2018 and as such the order / direction given were not complied by the workman. All the aforesaid facts show that the workman has no interest at all in this case.

4. From perusal of the record, it appears that notices were issued to the workman. Despite several opportunities given to the workmen he did not appear. On 27.02.2019 even after repeated call no body turned up on behalf of the workman. In the aforesaid facts & circumstances it appears that the workman has left with no interest at all in this case. So I pass “No Dispute Award” in this case. This award is effected after date of publication and gazette.

This is my award accordingly.

Dictated & Corrected by me.

25.11.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2019

का.आ. 2171.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना (बिहार) के पंचाट [संदर्भ सं. 07(सी)/2016] को प्रकाशित करती है जो केन्द्रीय सरकार को 12.12.2019 को प्राप्त हुआ था।

[सं. एल-12011/95/2015-आईआर बी-II]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 12th December, 2019

S.O. 2171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 07(C) of 2016] of the Industrial Tribunal, PATNA(BIHAR) as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 12.12.2019.

[No. L-12011/95/2015-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No. 07 (C) of 2016

Between the management of Chairman, UCO Bank, H.O- 10, Brabourne Road, Kolkata-700001 and Their workmen represented through State Secretary, UCO Bank Employees Association, Saboo Complex, 2nd floor, Behind Republic Hotel, Exhibition Road, Patna (Bihar) – 1.

For the management : Sri Praveen Kumar, Advocate.

For the Workman : Sri B. Prasad, State Secretary, UCO Bank Employees Association, Bihar State Committee.

Present: Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dated- 4th December, 2019

By the adjudication order no.-L-12011/95/2015-IR(B-II) dated- 15.02.2016 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of Section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as “ the Act”), the following dispute between The Chairman, UCO Bank, H.O- 10, Brabourne Road, Kolkata-700001 and Their workmen represented through State Secretary, UCO Bank Employees Association, Saboo Complex, 2nd floor, Behind Republic Hotel, Exhibition Road, Patna, (Bihar) -1 for adjudication to this tribunal:-

SCHEDULE

“Whether the part time sweeper / peon working for more than 25 years in UCO Bank are entitled to be regularized as part time sweeper / peon? If not what relief they are entitled to?”

2. By notification No.- L-12011/95/2015 –IR(B-II) New Delhi, the dispute was referred to this tribunal for its adjudication upon which Reference Case No.- 07(c) of 2016 was registered and notices were issued for appearance of the parties concerned, upon which both the parties appeared.

3. No statement of claim has been filed up till now on behalf of the workmen. The learned representative of the workmen filed a petition on 30.05.2019 stating therein that same and similar dispute between the same parties is already pending before this tribunal for adjudication and as such he does not want to proceed with the case and he pressed for withdrawal of this Reference Case, in view of the pendency reference case no.- 05(C) of 2016 which was referred to this tribunal for adjudication vide notification no.- L-12011/93/2015-IR(B-II) New Delhi, dt- 15.02.2016.

4. There is no objection from other side (management) on the prayer made by the representative of the workmen. Accordingly the prayer made by the workmen is hereby accepted and the petition dt-30.05.2019 is hereby allowed. Accordingly “No Dispute Award ” is being passed. This award is effected after date of publication and gazette.

This is my award accordingly.

Dictated & Corrected by me.

04.12.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2019

का.आ. 2172.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्व रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकता के पंचाट (संदर्भ संख्या 01/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.12.2019 प्राप्त हुआ था।

[सं. एल-41012/57/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 16th December, 2019

S.O. 2172.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the industrial dispute between the management of Eastern Railway and their workmen, received by the Central Government on 16.12.2019.

[No. L-41012/57/2011-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 01 of 2012

Parties: Employers in relation to the management of Eastern Railway

AND

Their workmen

Present : Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. S. Chatterjee, learned counsel with
Mr. S.M. Roy, learned counsel.

On behalf of the Workmen : Mr. A.K. Gayen, learned counsel

Dated: 6th December, 2019

Industry: Railways

A WARD

By Order No.L-41012/57/2011-IR(B-I) dated 03.01.2012 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Chief Works Manager Kanchrapara Workshop, Eastern Railway, Kolkata in terminating the service of Shri Ajit Kumar Roy w.e.f. 20.04.1989 is legal and justified? To what relief the work entitled?”

2. The factual matrix as revealed from the statement of claim filed by the workman is that the Applicant workman was appointed as Khalasi as regular staff at Kanchrapara Workshop, Eastern Railway with effect from 19th June, 1986. At the time of appointment during verification the workman inadvertently and due to ignorance of rules failed to mention in his attestation form that the workman was falsely implicated in a criminal case under Section 395/412 of IPC. Due to this the services of the workman was terminated on 27th August, 1987 vide order dated 25th August, 1987. Thereafter the workman filed a case before the Central Administrative Tribunal, Kolkata challenging the order of his termination wherein the Tribunal was pleased to pass an order setting aside the termination of the workman and directing to reinstate him. On 15th April, 1989 the workman was called in office of the Chief Works Manager and was asked to receive two letters and some amount of money. One letter contained his order of reinstatement in service with effect from 20th April, 1989 in pursuance of order passed by the Tribunal and the other letter was an order of his retrenchment from service with effect from 20th April, 1989. In criminal case the workman was acquitted of criminal charges, but of no avail. The service of the workman was terminated without following the principles of natural justice. It is further stated that it is settled principles of law that once a person is acquitted of the criminal charges, it automatically entitles him to be reinstated in service. The management also violated order of the Tribunal in O.A. No. 704 of 1987 but not reinstating the workman in service.

3. In reply to the statement of claim the management filed its written statement denying all the allegations made by the workman and pleaded *inter alia* that the workman was absorbed in Kanchrapara Workshop as Canteen Cleaner on the basis of Police Verification. The workman concerned had suppressed that he was involved in a criminal case. Therefore, his service was terminated under Rule 149 of I.R.E.C. Volume-I with payment of a sum equivalent to pay and allowance of 14 days in lieu of notice. However, the order of termination was challenged by filing O.A. 704 of 1989 in which the Tribunal quashed the termination order and directed the management to reinstate the workman in service with effect from the date from which his service was terminated. It was also mentioned in the order that the order would not be a bar, if after reinstatement the management wanted to take suitable action against the Applicant as per relevant law and rules. In compliance of above order, the workman was reinstated with effect from 20th April, 1989 and due payments were released. Thereafter, as permitted by the order passed by the Tribunal the workman was retrenched with effect from 20th April, 1989 on the ground of unsuitability under Rule 149 (6) and Rule 25F of the Industrial Disputes Act, 1947 with payment of one month's pay and allowances in lieu of notice. The order of retrenchment had been challenged by the workman after 23 years. Thus it is hopelessly time barred and as such not maintainable.

4. A rejoinder has been filed by the workman in reply to the pleadings of the written statement.

5. Before entering into merit of the contentions contained in the respective notes of argument by the parties, it is proper to mention here some of the admitted facts between the parties. It is admitted that the workman concerned was working as Khalasi in the establishment of the management from where he was terminated by the railway authority on 25.08.1987. It is also admitted that against this termination the workman concerned had approached the Central Administrative Tribunal, Kolkata by filing O.A. No. 704 of 1987 in which the Tribunal quashed the termination order and directed his reinstatement. It is also admitted that in compliance of order passed by the Central Administrative Tribunal, railway authority reinstated the workman concerned on 20th April, 1989 and on the same day the authority again retrenched the workman concerned on the ground of unsuitability under Rule 149(6) and Section 25F of the Industrial Disputes Act, 1947. In the background of above admitted facts the railway establishment has taken the plea that the reference with regard to the retrenchment of the workman concerned is hopelessly barred by limitation and not maintainable. However, the workman has challenged his retrenchment on the ground that provisions of Section 25F of the Industrial Disputes Act, 1947 have not been complied with.

6. So far as delayed raising of dispute by the workman is concerned, learned counsel for the management has contended that cause of action against retrenchment had arisen way back in 1989 whereas the reference is made in 2012. Hence, the issue of limitation and delay or laches has to be considered with reference to original cause of action and the reference order made after 23 years is barred by limitation and is not maintainable. Learned counsel for his argument has relied on **Bhoop Singh v. Union of India & Other**, AIR 1992 SC1414, **L. Chanda Kumar v. Union of India**, Civil Appeal No. 481 of 1980 decided on 18.03.1997 by the Hon'ble Apex Court and **P.S. Sadasivaswaamy v. State of Tamilnadu**, AIR 1974 SC 2271. However, going through all these case laws makes them distinguishable on facts of the case. These cases pertain to refusal of exercise of jurisdiction by the Hon'ble High Court under Article 226 of the Constitution of India on the ground of delay and laches. In none of above cases the controversy involves in the present case has been discussed, not even a reference of provisions of Industrial Disputes Act, 1947 has been given. Contrary to it Hon'ble Supreme Court in **Raghubir Singh v. General Manager, Haryana Roadways**, 2014 (6) Supreme Today 243 has dealt with the controversy involves in the present case. In above case law the Appellant was charged under Section 409 of IPC and was arrested by Police on 15th September, 1994. Further, on 21st October, 1994 the services of the

Appellant were terminated. Upon acquittal on 11.07.2002 the workman concerned reported to join his duties, but was informed that his services stood terminated with effect from 21st October, 1994. The dispute was raised and referred to the Labour Court which decided the reference against the workman on the ground that the reference of industrial dispute was highly time barred. It was held by the Hon'ble Apex Court that provisions of article 137 of the Limitation Act has no application to make the reference by the appropriate Government to the industrial tribunal. A workman cannot be restrained from seeking relief only on the ground of delay in raising the dispute. It was found by the Hon'ble Court that the dispute was raised by the workman soon after he was acquitted in the criminal case which was initiated at the instance of Roadways Corporation. Hence raising the industrial dispute belatedly and getting the same referred for adjudication was for justifiable reasons but the Hon'ble Court observed that even assuming that there was certain delay and laches on the part of the workman in raising the industrial dispute, the Labour Court is statutorily duty bound to answer the dispute referred to it by adjudicating the same on merit of the case and it ought to have moulded the relief in favour of the workman. Thus, from the above observation of the Hon'ble Apex Court it is explicitly clear that the reference cannot be brushed aside by this Tribunal only on the ground of delay and laches and the contention of the management regarding maintainability of the reference on the ground of delay and laches is not sustainable.

7. Admittedly the workman concerned has been retrenched by the management under Section 25F of the Industrial Disputes Act, 1947. Hence the question arises whether the workman has been retrenched after following the provisions of Section 25F of the Industrial Disputes Act, 1947. Section 25F of the Act may be quoted below –

“25F. Condition precedent to retrenchment of workmen – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months: and*
- (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”*

Thus from the above provisions of Section 25F it is clear that following conditions must be followed before retrenchment of a workman –

- (1) One month's notice in writing indicating reasons for retrenchment or
- (2) In lieu of notice, wages for the period of notice;
- (3) Compensation equivalent to fifteen days average pay for every completed years of continuous service or any part thereof in excess of six months; and
- (4) Notice to the appropriate Government or such authority specified in this behalf by notification.

8. It is not disputed that the workman concerned was in continuous service. Hence, only compliance of above conditions is required to be examined. The management has filed office order dated 12th April, 1989 by which the workman concerned was reinstated in service with effect from 20th April, 1989 in compliance of the judgment of the Central Administrative Tribunal, Kolkata passed in O.A. No. 704 of 1987. It is not disputed that while passing the order of reinstatement the Central Administrative Tribunal observed that the order of reinstatement shall not be a bar in taking any action by the management of railways as per law. Therefore, another order was passed by the railway authority on 19th April, 1989 for retrenchment of the workman, Shri Ajit Kumar Roy on the ground of unsuitability with effect from 20th April, 1989 afternoon and at the time of retrenchment one month's wages in lieu of notice was paid to the workman concerned. Compensation equal to fifteen days average pay for every completed years of service was also given. These facts are not denied by the workman concerned. But, there is nothing on record to show that notice was given to the appropriate government also by the railways. Even office order dated 19th April, 1989 does not mention this fact that the notice was given to the appropriate Government or any authority specified in this behalf. Thus, all conditions necessary for retrenchment of a workman as given in Section 25F of the Industrial Disputes Act, 1947 has not been complied with.

9. The Hon'ble Apex Court in Civil Appeal No. 1020 of 2011, **Raj Kumar v. Director of Education and Others** decided on 13th April, 2016 elaborately considered the nature of condition given in Section 25F(c) of the Industrial Disputes Act, 1947 and held that the condition of giving notice to the appropriate Government is not directory, but a mandatory one. The Hon'ble Court relied on its earlier judgment with approval passed in **Mackinnon Mackenzie & Company Ltd. v. Mackinnon Mackenzie Employees Union**, (1988) 4 SCC 42 in which the Hon'ble Court had held that notice under Section 25F(c) of the Industrial Disputes Act, 1947 can at the most be treated as a condition subsequent, but

it is still a mandatory condition required to be fulfilled by the employers before the order of retrenchment of the workman is passed. The relevant portion of the judgment may be quoted as below:

“Further, with regard to the provision of Section 25F(c) the Appellant company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workman. Therefore, we have to hold that the Appellant company has not complied with the condition precedent to retrenchment as per Section 25F clause (a) and (c) of the I.D. Act which are mandatory in law.”

10. Thus in the instant case, as has been seen above, the management has not adduced any evidence, oral or documentary to show that notice has been sent to the appropriate Government or to any authority specified in notification. Therefore, it is established that the condition precedents as given under Section 25F of the Industrial Disputes Act, 1947 have not been complied with before retrenchment of the workman concerned and consequently the retrenchment in question cannot be upheld and the workman is entitled for his reinstatement.

11. So far as back wages are concerned, no basis or formula can be laid down as to under what circumstances payment of entire back wages should be allowed. It depends upon the facts and circumstances of each case. In **U.P. Brushware Corporation v Uday Narayan Pandey**, (2006) 1 SCC 479 the Hon’ble Supreme Court has held that payment of back wages is not automatic where the action of the management is set aside. It should not be granted mechanically only because on technical ground or otherwise when an order of termination was found to be in contravention of the provisions of the Act.

12. Further in **General Manager, Hariyana Roadways v. Rudhan Singh**, (2005) 5 SCC 591 it has been held that

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of provisions of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment viz. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely whether ad-hoc, short-term, daily wages, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration is the length of service which the workman rendered with the employer. If the workman had rendered a considerable period of service and his services were wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and qualification possessed by him, he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, award of back wages for complete period viz. from the date of termination till the date of award, which our experience shows is often quite large would be wholly inappropriate.”

13. At the same time the workman is required to prove that he remained unemployed during the period in question. Hon’ble the Supreme Court in **Navartis Limited v. State of West Bengal**, (2009) 3 SCC 124 has held that

“19. There can, however, be no doubt whatsoever that there has been a in the approach of this Court with regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premises that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court in a number of decisions opined that the grant of back wages is not automatic. Burden of proof that he remained unemployed would be on the workman keeping in view the provisions of Section 106 of Evidence Act, 1872.”

14. Learned counsel for the workman relying on **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & Others**, (2013) 10 SCC 324 has contended that it is for the employer to prove that the workman was not gainfully employed during interregnum period. The Hon’ble Apex Court in **Deepali Gundu case** (supra) relying on **Rudhan Singh** and **Uday Narayan Pandey case** (supra) has held that payment of back wages either fully or partially depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages in addition to several factors mentioned in **Rudhan Singh case** (supra). The Hon’ble Court further held that –

“Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in gainful business or fortune and that he did not have any income, then the burden will shift to the employer.”

15. Now coming to the facts of the instant case, the workman concerned has nowhere pleaded, nor stated on oath that he was not gainfully employed during the intervening period. Hence, there is no question of shifting of burden on the employer to prove that the workman concerned was gainfully employed and that of awarding back wages to him.

16. In view of above discussion, it is established that the retrenchment of the workman concerned is not legally sustainable. Therefore, he is entitled to be reinstated in service. However, he is not entitled for back wages.

17. Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 6th December, 2019

नई दिल्ली, 16 दिसम्बर, 2019

का.आ. 2173.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 41/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.12.2019 को प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 16th December, 2019

S.O. 2173.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 16.12.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday, the 11th day of October 2019, 19 Asvina 1941)

ID No. 41/2013

Workman : Shri Gopalakrishnan.N, (dead)
S/o K.M. Narayanachettian,
Geetha Bhavan, Varanadu PO,
Cherthala- 688543.

Prasanna Kumari T.V,
W/o Late Gopalakrishnan,
Geetha Bhavan, Varanad PO
Cherthala- 688543.

By Adv.P.A.Saleem&C. Anil Kumar

Management : The Chief General Manager,
State Bank of India,
Administrative Office,
LMS Compound,
Thiruvananthapuram- 695033

By Adv.P.V. Surendranath

This case coming up for final hearing on 19-8-2019 and this Tribunal-cum-Labour Court on 11-10-2019 passed the following.

AWARD

1. This is an application filed by workman under Section 2(A) of the Industrial Disputes Act 1952.
2. During the pendency of the present Industrial Dispute, Shri Gopalakrishnan.N, the workman in this ID died. His widow Smt. Prasanna Kumari T.V filed an application for impleading her as party in the dispute. The applicant produced a copy of the Death Certificate of Shri Gopalakrishnan. Being the widow of the deceased workman, the applicant has the legal right to get herself included as party in the ID. Any financial benefits that may be due to the deceased workman shall be disbursed to the applicant only on production of consent letter of other legal heirs of the deceased workman. Accordingly Smt. Prasanna Kumari T.V is impleaded as supplementary 2nd party after the name of workman in the Industrial Dispute.
3. The workman filed a claim petition. According to him, while he was working as Special Assistant in the State Bank of India, Kalavoor Branch, Allapetty District, some higher official of the management came to the branch and summoned the workman to the Manager's cabin and threatened to affix his signature in a letter shown to him. Subsequently he received an order suspending him from service w.e.f. 6-1-2011. He was served with a notice dated 9-5-2011 alleging certain charges against him. The allegations against the workman were serious lapses and irregularities while working at Kalavoor branch. He challenged the charge memo in the Hon'ble High Court of Kerala in WP(C) 27010/ 2011. The Hon'ble High court disposed the petition. The management initiated disciplinary action on the basis of the chargesheet. An enquiry was conducted in violation of principles of natural justice. The workman was not given proper opportunity to defend the charges alleged against him. The Enquiry Officer did not follow any of the basic principles enunciated by the Hon'ble Supreme Court as well as High Court in various judgments. The Enquiry Officer questioned the management's witnesses. Though there were six witnesses proposed by the management, the Presenting Officer examined only two interested witnesses who are the Bank employees. The other four independent witness were the affected parties as per the chargesheet. However they were not examined. After completing the enquiry, the Enquiry Officer gave a report holding that the charges against the workman are proved. The management accepted the report of the Enquiry Officer and proposed a punishment of "dismissal without notice". Without considering the request made by the workman, the Disciplinary Authority dismissed the workman from service of the Bank without notice. The workman preferred an appeal before the Appellate Authority which also came to be dismissed.
4. The workman has not committed any of the misconducts alleged in the chargesheet. Even in the enquiry, there is no finding that the Bank sustained any monetary loss because of the action by the workman.
5. The management filed Written Statement denying the above allegations. According to management, action was initiated against the workman for serious irregularities committed by him while working as Special Assistant at Kalavoor branch. Accordingly he was kept under suspension in terms of bipartite settlement dated 10-4-2002 pending initiation of disciplinary proceedings. An FIR was also registered against the workman for offence under Section 403, 406, 409, 420, 468 & 471 of Indian Penal Code. The workman was working as Special Assistant of Kalavoor branch of the management Bank from 10-8-2004 to 4-1-2011. During this period, he committed serious irregularities and acts of misconduct and accordingly a chargesheet dated 20-10-2011 was served on him. The charges were-
 - (1) that he unauthorisely transferred a sum of Rs.70161/- from his demand loan Account No. 30371704422 to his saving Bank Account No. 10535592540 on various dates between 13-4-2010 & 24-7-2010 using the debit adjustment,
 - (2) that he has unauthorisely debited the demand loans of 5 customers, viz a viz Annie ND, Jayaram M, Prabhat V, Chandran and Raju T.V and transferred an aggregate sum of Rs. 3 Lakh on various dates and afforded credit to his Saving Bank Account No. 10535592540 & 1053559255,
 - (3) that he has unauthorisely debited 2 demand loan accounts of customer of Smt. Annie D on various dates and transferred an aggregate sum of Rs.70000 to his Saving Bank Account No. 31173799730,
 - (4) that his current account was overdrawn, far exceeding the sanctioned limit on several occasions during the period from 26-3-2007 to 11-3-2008.

The workman challenged his suspension in Writ Petition WP(C)27010/2011 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala dismissed the above case as per judgment dated 15-2-2012 holding that there is no irregularity in suspending the workman on proposed disciplinary action as per memo of charges. Since the explanation offered by the workman was not tenable, the management decided to conduct an enquiry against workman. An Enquiry Officer was appointed to conduct the enquiry. The Enquiry Officer conducted the enquiry in compliance with the principles of natural justice and affording full and ample opportunity to the workman to establish his innocence. Copies of all management Exhibits were given to the workman, he was permitted to cross examine the witnesses examined by the management and he was also permitted to adduce evidence to defend his case. After considering the evidence adduced in the enquiry, the Enquiry Officer concluded holding that the charges against the workman are proved. The workman was served with a copy of the Enquiry Report. The Disciplinary Authority considered the report,

the evidence and materials on record and independently decided that the charges against the workman were proved. After considering the representation given by the workman dated 15-8-2012, the Disciplinary Authority proposed a penalty of dismissal without notice on the workman. The workman was also afforded an opportunity to offer his comments and also an opportunity for personal hearing. Ultimately the Disciplinary Authority imposed a penalty of dismissal from service of the Bank on the workman. The Appellate Authority also rejected the appeal vide order dated 19-12-2012.

6. The allegation that some high ranking officials of the management Bank forced the workman to sign some document is denied by the management. The enquiry was conducted following the principles of natural justice after according adequate opportunity to the workman. The further allegation that the management did not examine any of the independent witness proposed by the management which caused prejudice to the workman is denied by the management. The workman, if he so desired could have examined those witnesses on his behalf. The punishment awarded to the workman is proportional to the charges proved against him. The Bank employees are dealing with the money of the public and hence they are required to have high standards integrity and honesty. The confidence of the management as well as the customers and general public in the employees of the Bank is a must for the smooth functioning of the Bank. Since the misconduct proved against the workman is serious financial irregularity in dealing with the customers account, the punishment awarded to the workman is just and adequate.

7. The workman filed his rejoinder denying the allegations in the written statement filed by the management. While the workman was working in Kalavoor branch, certain account holders were given some amount as loan in order to keep the good account holders live and in the interest of the management Bank. This is done with the implied consent of the Manager as he used to be away in the field for collection of non-performing accounts. When the senior officers came to the Bank to investigate Smt. Annie, the Account Holder whose account is also involved in this case was questioned by them. She explained the real facts regarding the transaction. Though the charge memo alleges that the workman unauthorisely debited the demand loans of 5 customers, none of those account holders were examined in the Enquiry Proceedings except an employee of the Bank. The enquiry conducted against the workman was against principles of natural justice as observed by the Hon'ble Supreme Courts and High Courts. The charges levelled against the workman are that of irregularity and not that of misappropriation of funds. Hence even if it is assumed that the charges were proved, the punishment awarded is disproportionate to the charges alleged against the workman. In spite of repeated requests by the workman, the Enquiry Officer refused to summon independent witnesses who are already scheduled in the witness schedule of the management. The workman has 30 years of unblemished service in the management Bank. He was suppose to retire on superannuation on 28th February 2014. Hence the punishment imposed on him at the fag end of his service is very harsh and disproportionate to the charges levelled against him.

8. On completion of pleadings, the Enquiry Officer was examined as MW-1 and enquiry file along with the register of proceedings were marked as Exhibit M-1 & M-1(a).

9. The following issues are framed to be adjudicated in this case;

- (1) Whether the enquiry is conducted in a fair and proper manner?
- (2) Whether there is adequate legal evidence to support the charges against the workman?
- (3) Whether the punishment awarded is proportionate to the charges proved against the workman?
- (4) Relief and cost?

10. Issue No. 1

The legality and fairness of the enquiry was taken as a preliminary issue on the request of both the parties. The case of the workman is that he is a workman as defined under Section 2(s) of ID Act 1947 and the matter in issue will come under the purview of Section 2(g), 2(j) & 2(k) of ID Act. According to the workman, he was working as Special Assistant in Kalavoor branch of the management Bank. He was threatened by the Senior Managers to sign on a document which ended up in a disciplinary action against him. He was kept under suspension w.e.f. 6-1-2011. The management served a notice on 9-5-2011 directing him to submit his explanation. The management issued chargesheet against the workman alleging serious lapses and irregularities on his part while working at Kalavoor branch. The management initiated domestic enquiry on the basis of chargesheet issued to the workman. The Enquiry Officer conducted the enquiry in complete violation of principles of natural justice and no opportunity was afforded to the workman to substantiate his case. The Enquiry Officer also failed to follow the guidelines issued by Hon'ble Supreme Court of India in **State of Uttaranchal and others V Kharaksingh, 2009(1) LLJ 255(SC)**. The Enquiry Officer has not recorded the deposition of witnesses examined in the enquiry and the independent witnesses were not examined in the enquiry inspite of repeated request from the workman. The two witnesses examined were officials of the Bank and hence they are interested witnesses. The enquiry was vitiated on the ground of denial of fair and reasonable opportunity to workman to substantiate his contentions. On the basis of the enquiry report, the management imposed a punishment of dismissal from service of the Bank without notice on the workman. The Disciplinary Authority did not consider the request of the workman to re-examine the evidence and the flaw in the procedure of enquiry conducted against him. The Appellate

Authority also refused to entertain his appeal confirming the order issued by the Disciplinary Authority dismissing him from the service of the Bank without notice. The workman has not committed any misconduct as alleged in chargesheet. There is no record or allegation that the management suffered any financial loss as per the allegation in the chargesheet. The workman had put in 31 years of service and he was due to superannuate during February 2014. Viewed from any angle, the punishment imposed by the management is shockingly disproportionate and not commensurate with the gravity of charges proved against him. Hence the workman sought a direction to set aside the order of punishment and to direct the management to reinstate him in service with back wages, continuity of service and all benefits.

11. According to the management, the workman filed this Industrial dispute suppressing the material facts, raising untenable and unsustainable contentions. The punishment awarded to the workman is on the basis of the proved misconducts in an enquiry conducted as per the provisions of the Certified Standing Orders and also following principles of natural justice. First Information report was also filed against the workman for committing offences punishable under appropriate sections of Indian Penal Code. Serious financial irregularities were detected while the workman was deployed as Special Assistant at Kalavoor branch of the management Bank during the period from 10-8-2004 to 4-1-2011. The workman challenged the suspension before the Hon'ble High Court of Kerala and the same was dismissed. Hence Enquiry Officer is appointed to enquire into the charges levelled against the workman. The Enquiry Officer acted in a diligent and reasonable manner and afforded opportunity to the workman to substantiate his contentions. The workman was allowed to cross-examine the management's witness and the workman was also allowed to produce his evidences, documentary as well as oral. The Enquiry Officer returned a finding of guilt against the workman and held that all the charges against the workman were proved. The Disciplinary Authority considered the report along with the evidence and proposed a punishment of dismissal from service without notice. The workman was also given an opportunity to explain his position. On finding that there is no merit in the averments by the workman, the Disciplinary Authority imposed punishment of dismissal from the service of Bank without notice on the workman. The Appellate Authority also considered the submissions made by workman but finally rejected the appeal. Considering the gravity of misconduct proved against the workman, the punishment imposed is proper and is in proportion to the misconduct committed by the workman. Being an employee of the Public Sector Bank, the workman is bound to maintain integrity, honesty and trust worthiness. The management requested to consider the validity of domestic enquiry as a preliminary issue and in case it is found that it is vitiated on any ground, the management further requested that they may be permitted to adduce independent evidence to substantiate the charges levelled against the workman. According to the management, the punishment imposed against the workman is just, proper and is proportionate to the gravity of misconduct proved against him.

12. After affording both sides to take steps and for production of documents, the validity of the domestic enquiry was considered as a preliminary issue. The management examined MW-1, the Enquiry Officer and marked documents M-1 & M-1(a), the enquiry file and the register of proceedings.

13. The enquiry file and the proceedings of enquiry were marked through the Enquiry Officer, MW-1. In his deposition, he stated that Exhibit M-1(a) is a register annexed to Exhibit M-1 which forms part of Exhibit M-1 document. In his evidence, **MW-1 stated that the enquiry started on 13-2-2012 and on the same day, the charge was read over to the workman.** However **MW-1 further stated that on 13-2-2012, the workman was not present.** He further added that the charge memo was read over to the delinquent workman on 12-3-2012. In his evidence MW-1 added that the Presenting Officer for the management produced documents No. PEX-1 to PEX-50 on 13-12-2012, i.e. on the 1st day of the hearing. It has also come out in evidence that the Enquiry Officer did not insist for the signature of the participants in the proceedings of enquiry. He also stated that when the 2nd witness was being examined, both the witnesses were present in the room where enquiry were being conducted. The Enquiry Officer denied that he concluded the enquiry in an improper manner. Exhibit M-1(a) is a register containing the proceedings of enquiry recorded by the Enquiry Officer. The proceedings of the 1st day of the enquiry dated 13-2-2012 recorded in Exhibit M-1(a) reveals that the Enquiry Officer has marked the documents produced on behalf of the management without furnishing the list of the same or copy of the same and it was done in his absence. On going through the proceedings of enquiry as noted in M-1(a) register which forms part of enquiry file, it is seen that there is a clear violation of principles of natural justice by the Enquiry Officer. The workman was denied a fair and reasonable opportunity to substantiate his contentions and he acted in a partisan manner prejudicial to the interest of the workman. The charges levelled against the workman are of very serious nature. The procedure followed by the Enquiry Officer as revealed from Exhibit M-1(a) Register, it is very clear that the enquiry was not conducted in a fair and proper manner. It is clear from Exhibit M-1(a) Register that even the charges were not read out to the workman which is a preliminary requirement in the domestic enquiry. Hence the enquiry is vitiated for the reason that the Enquiry Officer has not followed the basic requirement for conducting a domestic enquiry.

14. Hence the issue is decided in favour of the workman and against the management.

15. **Issue No. 2 & 3**

Issue No.1 regarding the fairness of enquiry against the workman is decided against the management and in favour of the workman. This issue was decided at the preliminary stage and the management Bank challenged the said order in OP(LC) 23/2017 before the Hon'ble High Court of Kerala. The single bench by its decision dated 16th August 2017 dismissed the original petition leaving open the right of management to impugn the final award of the Labour Court. This decision of the single bench was challenged before the Divisional bench of the Kerala High court in WP No. 359/2018. The Writ Appeal was also dismissed vide order dated 25-6-2018 without prejudice to the rights of the management Bank to pursue the proceedings before the Labour Court to substantiate their case and they are free to challenge the findings on validity of the enquiry once the final award is passed. In **Cooper Engineering Ltd. V P.P.Mundhe**, AIR 1975-SC-1900 and in **G.P.Maheshwari V Delhi Administration**, 1983-KHC-514, the Hon'ble Supreme Court held that the preliminary awards passed by the Labour Courts or Tribunals cannot be challenged in the High Court as a matter of course. It was also held by the Apex Court that the management has got right to plead for further evidence directly before the Tribunal in the event of an adverse decision in the preliminary award regarding the fairness of the enquiry. In this case, the management has already taken a plea that the management shall be allowed to adduce further evidence before the Tribunal in the event of an adverse decision on the preliminary issue of fairness of enquiry. In view of the above, the management was allowed to adduce further evidence before this Tribunal to substantiate the charges against the workman.

16. The management adduced Exhibits M-1 to M-113 and examined 2 witnesses as MW-2 & MW-3 to substantiate their case. The workman also examined himself as WW-1 to defend his case against the management.

17. The charges levelled against the workman are –

- (1) that he unauthorisedly transferred a sum of Rs.70161/- from his demand loan Account No. 30371704422 to his saving Bank Account No. 10535592540 on various dates between 13-4-2010 & 24-7-2010 using the debit adjustment,
- (2) that he has unauthorisely debited the demand loans of 5 customers, viz a viz Annie ND, Jayaram M, Prabhat V, Chandran and Raju T.V and transferred an aggregate sum of Rs. 3 Lakh on various dates and afforded credit to his Saving Bank Account No. 10535592540 & 1053559255,
- (3) that he has unauthorisely debited 2 demand loan accounts of customer of Smt. Annie D on various dates and transferred an aggregate sum of Rs.70000 to his Saving Bank Account No. 31173799730,
- (4) that his current account was overdrawn, far exceeding the sanctioned limit on several occasions during the period from 26-3-2007 to 11-3-2008.

18. Exhibit M-110 is the reply dt. 15-8-2012 given by the workman against the charge memo. According to the counsel for the management, the workman admitted the charge in Exhibit M-110. According to the workman, matured NSCs favoring him was sent for collection in the month of March 2010. He was expecting the proceeds before the end of March to be utilized the amount to meet the income tax liability. Hence he made some adjustment to pay income tax and to repay that amount, he decided to renew the demand loan. Since the Branch Manager was not available to renew the loan, he debited his Demand Loan Account thinking that the debit will not affect the Bank as the debit will be in his account. From the above reply given by the workman, it is clear that he has unauthorisely withdrawn money using the debit adjustment menu. This will substantially prove the Ist charge against the workman.

19. With regard to the 2nd charge, the case of the management is that the workman unauthorisely debited the demand loans of 5 customers ie.. Annie ND, Jayaraman M, Prabhat V, Chandran and Raju T.V and transferred an aggregate sum of Rs. 3 lakh on various dates and afforded credit to his Saving Bank Account. The management produced Exhibits M-3 to M-73 to substantiate the unauthorized transactions by the workman. According to the counsel for the workman, all the above mentioned transactions were authorized by the concerned customers and none of them filed any complaint regarding the transactions made by the workman. Though Shri Prabhat V was a temporary employee of the Bank was examined by the management before this Tribunal, he categorically stated in evidence that he has not lost any money in the above transaction and he has not filed any complaint with anybody. The general case of the workman here is that these are normal transactions to facilitate good and reliable customers whenever they approach the Bank and the Bank Manager is not available. Exhibit M-21 to M-52 are voucher verification reports for customer account produced by the management. According to MW-2, the Bank Manager, the Exhibit M-21 to M-52 are voucher verification reports and the then Manager or authorized officer has signed all the Exhibits. According to him, all transactions of the Bank are incorporated in the said statement. It is further stated by MW-2 that if any irregularity is noticed, the Manager is supposed to report the same and according to him, no irregularity is reported during the relevant point of time. It is very clear from the above documents that the number of transactions on each day are very few and if it is a totally irregular transaction, it should have been noticed by the Manager and appropriate action could be taken at that point of time. It is felt that the practice adopted by the workman were available in the normal banking practice unless complaints are

received from the customers. It is also seen that similar cases were initiated against Banking officials though there is no complaint from the customers or even when there is no loss of money for either of the customers or the Bank. It is important to note that none of the account holders in this charge are examined in this case except Shri Prabhath V who is a temporary employee of the Bank. He also stated in his evidence that he has not filed any complaint and he has not lost any money. Hence it can only be presumed that there are authorized transactions by the customers but irregular action on the part of the workman can at the best be categorized as an irregular banking practice.

20. The 3rd charge against the workman is that he had un-authorisely debited two demand loan amounts of customer Smt. Annie N.D. on various dates and transfer an aggregate sum of Rs.70,000/- to his SB account. The management produced Exbt.M4 and M5 statements of accounts of Smt. Annie N.D. Exbt.M12 is the bank account statement in respect of the workman to show that the amounts were credited to the account of the workman. Exbt.M72 to M80 are the debit slips for the above transaction. Exbt.M96 to M101 are credit vouchers. According to the management the said amounts were withdrawn by the workman by using Exbt.M104 to M107 withdrawal slips. Exbt.M108 and M109 are Teller Receipts of the workman dt.02.09.2010 and 08.11.2010 respectively. The above transactions are not disputed by workman. However the exact nature and reason for such transactions can be explained only by Smt. Annie N.D. Though she was proposed to be a witness, the management failed to examine her during the course of their evidence. Hence it is not possible to conclude from the available evidence whether the transactions were authorized by Smt. Annie N.D. or not. Though the management tried to justify their position through Exhibits M15 & M16 and to compare the signatures on those documents with the signatures on Exbts. M-74 to M-80, M-96 to M-101 and Exbts. 104 to 107 and to argue that the difference in signature will show that those documents were created by the workman for unauthorized transactions. The management witness MW2 stated in his evidence that there was no complaint whatsoever from Smt. Annie N.D. regarding any of the transactions or loss of money. This implies that all the above transactions are authorized by Smt. Annie N.D. unless it is other wise true. In the circumstances of this case, the best course available to the management was to put Smt. Annie in the witness box. In the absence of any complaint, she would have explained the nature of transactions and reasons for not filing the complaint. Since the management failed to do so, it can only be presumed that Smt. Annie authorized all the transactions. Though the action on the part of the workman cannot be fully justified, the failure of the management takes the rigor of the charge.

Hence the available evidence will not conclusively support the above charge.

21. The next charge against the workman is that there exceeded the sanction he has overdrawn his current account over draft far exceeding the sanctioned limit during 26.03.2007 to 11.03.2008. This charge is fairly admitted by the workman and is substantially proved.

22. Going by the evidence adduced by the management during this proceedings it can be concluded that Charge No.1 is proved as admitted, Charge No.2 is partially proved and Charge No.3 is not proved and Charge No.4 is proved as admitted.

23. Issue No. 4

The learned Counsel for the management argued that even if the charges are found to be partially proved, this Tribunal shall not interfere with the punishment awarded to the workman. Relying on the decisions of Hon'ble Supreme Court in **State Bank of India and others Vs S.N.Goyal**, (2008) 8 SCC 92, **State Bank of India and others Vs Bela Bagchi and others**, (2005) 7 SCC 435, **Disciplinary Authority-cum-Regional Manager and others Vs Nikunja Bihari Patnaik**, (1996) 9 SCC 69, the learned Counsel for the management argued that an official working in a Bank is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and customers and every employee of the Bank is required to pay all possible steps to protect the interest of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence. Since the workman in this case has acted in a manner which is against the interest of the banking industry, the punishment awarded to him cannot be considered as excess or disproportionate to the charges levelled against him. The learned Counsel for the management also quoted extensively from the decision of the Hon'ble Supreme Court. The workman of **M/s. Firestone Tyre & Rubber Company (India) Pvt Ltd Vs the Management** AIR 1973 SC 1223 to hold that once the charges against the workman are proved, even if partially this Tribunal shall not interfere with the punishment awarded to the workman.

24. The learned Counsel for the workman relied on the decision of Hon'ble Supreme Court in **Mavji C. Lakum Vs Central Bank of India** 2008 (3) LLJ 1 (SC) to hold that "if the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, this Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. The Hon'ble Supreme Court in **M/s. Firestone Tyre & Rubber Company (India) Pvt Ltd Vs the Management**, AIR 1973 SC 1227 observed that;

“The words “in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified” clearly indicates that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer, establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd. (1). case can no longer be invoked by an employer. **The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct but also to differ from the said finding if a proper case is made out.**”(emphasis added).

25. In the present case it is alleged by the management that there are certain irregularities in handling the accounts of few customers. It is admitted by the management that there is no complaint from any of those customers. The management also failed to bring any of those customers before this Tribunal to clarify whether any of the transactions under taken by the workman were unauthorized. If those transactions not authorized by those customers there is every possibility that they filed complaints before the Bank management and also came before this Tribunal to explain their position. The management introduced MW3 as a customer in this proceedings who turned out to be a part time employee of the management bank. Being a part time employee, he is an interested witness and cannot go against the management while adducing evidence. Even then he confirmed his evidence that there is no loss of money for him. He did not explain the reason why he has not complained if the transactions were unauthorized. The two charges are that are substantially proved are Charge 1 and 4 which are admitted by the workman.

26. The workman has put in a service of 30 years with the bank and according to him there are no complaints against him which is not denied by the management. The workman expired during these proceedings and his wife was impleaded as a party to the proceedings. Looked at from any angle there is no difficulty in concluding that the punishment of dismissal without notice is shockingly disproportionate to the charges levelled against the workman.

27. Though it is a fit case to be remitted back to the Disciplinary Authority to decide the quantum of punishment, in view of the special circumstance of the case it is appropriate that the matter is finally decided by this Tribunal. Considering the facts that the workman is no more, it is felt that the interest of justice would be met if the workman is awarded a punishment of discharge from service with superannuation benefits i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time as provided under Clause 6 of Memorandum of Settlement on Disciplinary Action & Procedure dt.10.04.2002.

Hence an award is passed holding that the punishment imposed on the workman dismissing him from the service of the bank without notice is not proper and the same is set-aside and the punishment awarded to the workman is modified as discharge from service with superannuation benefits i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 11th day of October, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman-

WW-1 Shri Gopalakrishnan T.V on 11-7-2019

Witness for the Management

MW-1 Shri. B.Venugopalan on 7-1-2015

MW-2 Shri. Aneesh Kumar K on 28-5-2019

MW-3 Shri Prabhat.V on 25-5-2019

Exhibits for the workman - Nil

Exhibits for the Management:-

M1 - Memo of charges dated 20-10-2011

M-2 - Explanation by the workman dated 2-11-2011

M-3 - Statement of account of Gopalakrishnan for the period 24-4-08 to 3-8-2010

M-4 - Statement of account of Annie ND for the period 17-5-2010 to 5-1-2011

M-5 - Statement of account of Annie ND for the period 5-10-2010 to 6-1-2011

M-6	-	Statement of Gold Loan Account of Jayaram M for Period 15-9-2010 to 6-1-2011
M-7	-	Statement of Gold Loan Account of Prabhath V for Period 16-9-2010 to 5-1-2011
M-8	-	Statement of Gold Loan Account of Chandran N for Period 16-8-2010 to 5-1-2011
M-9	-	Statement of Gold Loan Account of Raju T.V for period 17-6-2010 to 1-10-2010
M-10	-	Statement of account of Gopalakrishnan for period 1-4-2008 to 31-1-2011
M-11	-	Statement of account of Gopalakrishnan for period 1-8-2010 to 31-1-2011
M-12	-	Statement of Account of Annie ND for period 1-9-2010 to 30-11-2010
M-13	-	Statement of Current Account of Gopalakrishnan for Period 1-4-2007 to 31-7-2007
M-14	-	DL NSC Staff Account No. 30371704422 of Gopalakrishnan
M-15	-	DL Bank Deposit Account No. 31173664667 of Annie ND
M-16	-	DL Bank Deposit Account No. 31455006414 of Annie ND
M-17	-	Gold Loan Account No.31410404281 of Jayaram M
M-18	-	Gold Loan Account No.31409182340 of Prabhath V
M-19	-	Gold Loan Account No.31334442928 of Chandran N
M-20	-	Gold Loan Account No. 31216295943 of Raju T.V
M-21	-	VVR dated 13-4-2010
M-22	-	VVR dated 20-4-2010
M-23	-	VVR dated 24-4-2010
M-24	-	VVR dated 8-7-2010
M-25	-	VVR dated 13-7-2010
M-26	-	VVR dated 17-7-2010
M-27	-	VVR dated 22-7-2010
M-28	-	VVR dated 24-7-2010
M-29	-	VVR dated 6-8-2010
M-30	-	VVR dated 10-8-2010
M-31	-	VVR dated 20-8-2010
M-32	-	VVR dated 30-8-2010
M-33	-	VVR dated 2-9-2010
M-34	-	VVR dated 23-9-2010
M-35	-	VVR dated 4-10-2010
M-36	-	VVR dated 8-10-2010
M-37	-	VVR dated 9-10-2010
M-38	-	VVR dated 13-10-2010
M-39	-	VVR dated 15-10-2010
M-40	-	VVR dated 20-10-2010
M-41	-	VVR dated 21-10-2010
M-42	-	VVR dated 22-10-2010
M-43	-	VVR dated 28-10-2010
M-44	-	VVR dated 29-10-2010
M-45	-	VVR dated 8-11-2010

M-46	-	VVR dated 11-11-2010
M-47	-	VVR dated 13-11-2010
M-48	-	VVR dated 24-11-2010
M-49	-	VVR dated 30-11-2010
M-50	-	VVR dated 6-12-2010
M-51	-	VVR dated 13-12-2010
M-52	-	VVR dated 1-1-2011
M-53	-	Account No. 30371704422 of Gopalakrishnan N date of debit 13-4-2010
M-54	-	Account No. 30371704422 of Gopalakrishnan N date of debit 24-7-2010
M-55	-	Account No. 30371704422 of Gopalakrishnan N date of debit 24-7-2010
M-56	-	Account No. 31173664667 of Annie N.D date of debit 6-8-2010
M-57	-	Account No. 31173664667 of Annie N.D date of debit 10-8-2010
M-58	-	Account No. 31455006414 of Annie N.D date of debit 13-10-2010
M-59	-	Account No. 31173664667 of Annie N.D date of debit 15-10-2010
M-60	-	Account No. 31173664667 of Annie N.D date of debit 6-12-2010
M-61	-	Account No. 31173664667 of Annie N.D date of debit 6-12-2010
M-62	-	Account No. 31410404281 of Jayaram M date of debit 11-11-2010
M-63	-	Account No. 31410404281 of Jayaram M date of debit 11-11-2010
M-64	-	Account No. 31410404281 of Jayaram M date of debit 13-12-2010
M-65	-	Account No. 31410404281 of Jayaram M date of debit 13-12-2010
M-66	-	Account No. 314109182340 of Prabhat V date of debit 28-10-2010
M-67	-	Account No. 314109182340 of Prabhat V date of debit 28-10-2010
M-68	-	Account No. 314109182340 of Prabhat V date of debit 24-11-2010
M-69	-	Account No. 314109182340 of Prabhat V date of debit 24-11-2010
M-70	-	Account No. 31334442928 of Chandran N date of debit 1-1-2011
M-71	-	Account No. 31334442928 of Chandran N date of debit 1-1-2011
M-72	-	Account No. 31216295943 of Raju T.V date of debit 30-8-2010
M-73	-	Account No. 31216295943 of Raju T.V date of debit 23-9-2010
M-74	-	Account No. 31173664667 of Annie N D date of debit 2-9-2010
M-75	-	Account No. 31173664667 of Annie N D date of debit 2-9-2010
M-76	-	Account No. 31173664667 of Annie N D date of debit 20-10-2010
M-77	-	Account No. 31173664667 of Annie N D date of debit 20-10-2010
M-78	-	Account No. 31455006414 of Annie N D date of debit 21-10-2010
M-79	-	Account No. 31455006414 of Annie N D date of debit 8-11-2010
M-80	-	Account No. 31455006414 of Annie N D date of debit 8-11-2010
M-81	-	Account No. 10535592540 of Gopalakrishnan date of credit 13-4-2010
M-82	-	Account No. 10535592540 of Gopalakrishnan date of credit 24-7-2010
M-83	-	Account No. 10535592551 of Gopalakrishnan date of credit 6-8-2010
M-84	-	Account No. 10535592540 of Gopalakrishnan date of credit 10-8-2010
M-85	-	Account No. 10535592540 of Gopalakrishnan date of credit 13-10-2010

M-86	-	Account No. 10535592540 of Gopalakrishnan date of credit 15-10-2010
M-87	-	Account No. 10535592551 of Gopalakrishnan date of credit 6-12-2010
M-88	-	Account No. 10535592551 of Gopalakrishnan date of credit 11-11-2010
M-90	-	Account No. 10535592551 of Gopalakrishnan date of credit 13-12-2010
M-91	-	Account No. 10535592540 of Gopalakrishnan date of credit 28-10-2010
M-92	-	Account No. 10535592551 of Gopalakrishnan date of credit 24-11-2010
M-93	-	Account No. 10535592551 of Gopalakrishnan date of credit 1-11-2011
M-94	-	Account No. 10535592540 of Gopalakrishnan date of credit 30-8-2010
M-95	-	Account No. 10535592540 of Gopalakrishnan date of credit 23-9-2010
M-96	-	Account No. 31173799730 of Annie ND date of credit 2-9-2010
M-97	-	Account No. 31173799730 of Annie ND date of credit 2-9-2010
M-98	-	Account No. 31173799730 of Annie ND date of credit 20-10-2010
M-99	-	Account No. 31173799730 of Annie ND date of credit 20-10-2010
M-100	-	Account No. 31173799730 of Annie ND date of credit 21-10-2010
M-101	-	Account No. 31173799730 of Annie ND date of credit 8-11-2010
M-102	-	Letter dated 16-3-2012 from PO
M-103	-	Statement of OD current Account of Gopalakrishnan from 16-3-2007 to 6-9-2007
M-104	-	Withdrawal voucher dated 2-9-2010 for Rs.20000/- of Annie N.D
M-105	-	Withdrawal voucher dated 20-10-10 for Rs.20000 of Annie N.D
M-106	-	Withdrawal Voucher dated 21-10-2010 for Rs.10000 of Annie N.D
M-107	-	Withdrawal voucher dt.8-11-2010 for Rs.20000 of Annie N.D
M-108	-	Teller Receipt/payment cash register dated 2-9-2010 of Gopalakrishnan
M-109	-	Teller Receipt/ payment cash register dated 8-11-2010 of Gopalakrishnan
M-110	-	Reply to chargesheet by Shri Gopalakrishnan dt 15-8-2012
M-111	-	Notice dt. 20-9-2012 for appearance in disciplinary proceedings Served on Gopalakrishnan
M-112	-	Reply to notice by Gopalakrishnan dt. 28-9-2012
M-113	-	Order dated 10-10-12 passed in Disciplinary proceedings.

नई दिल्ली, 16 दिसम्बर, 2019

का.आ. 2174.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उतर रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 चण्डीगढ़ के पंचाट (संदर्भ संख्या 1152/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.12.2019 को प्राप्त हुआ था।

[सं. एल-41012/115/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 16th December, 2019

S.O. 2174.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1152/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 16.12.2019.

[No. L-41012/115/2000-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH****Present:** Sh. A.K. Singh, Presiding Officer**ID No. 1152/2005****Registered on 28.09.2000**

Smt. Kailasho Devi, W/o Sh. Kewal Krisha, R/o H.No.403, Block B, Rly. Colony,
Balmik Mandir, Kalka Distt. Panchkula (Haryana).

...Workman

Versus

1. The Divisional Railway Manager, Northern Railway, Ambala Cantt.-133001.

2. The Senior Medical Superintendent, Northern Railway, Kalka.

...Management

AWARD**Passed on:-02.12.2019**

Central Government vide Notification No. L-41012/115/2000/IR(B-I) Dated 11.09.2000, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of the Divisional Railway Manager, Northern Railway, Ambala Cantt. and Senior Medical Superintendent, Northern Railway, Kalka Distt. Panchkula(Haryana) in terminating the services of Smt. Kailasho Devi W/o Sh. Kewal Krisha, Ex-Safaiwali w.e.f. 31.08.1999 is just and legal? If not, what relief the workman is entitled?”

1. Both the parties were put to notice and claimant/workwoman Kailasho Devi filed her statement of claim with the averment that she was appointed as Safaiwali vide appointment letter dated 04.12.1991 after qualifying medical test. It is further alleged that she was removed from service on 13.09.1999 due to the strength of anonymous complaint with close mind at the dictate of the higher authorities without affording reasonable opportunity and in utter violation of principle of natural justice. The punishment is shockingly disproportionate. Therefore, it is prayed that workwoman be reinstated in service with continuity of service and full back wages.

2. Management has filed its written statement that facts alleged in para 1 and 2 of the claim petition is a matter of record to the extent of workwoman appointment. It is further stated that appointment of workwoman Kailasho Devi was found to be fraudulent therefore on the advice of the vigilance, charge-sheet was issued to her. After the enquiry, she was removed from service and punishment imposed was proportionate to the seriousness of charge and the gravity of misconduct. The claimant was removed from service in accordance with the D & AR Rules after giving reasonable opportunity during the course of enquiry to prove her innocence. The allegation of removal at the dictate of higher authority is baseless. It is further alleged that it was a case of fraudulent appointment in which she was removed from service in accordance with the rules therein hence, applicant is not entitled to be reinstated with back wages and reference may kindly be awarded against the claimant.

3. Workwoman has submitted her affidavit as Ex.WW1, alleging therein that she was appointed in handicapped quota with the railway department after qualifying the medical test and served with the respondent for more than 8 years but she was removed from service without any complaint and misconduct committed by her. She has proved the documents through her affidavit Ex.WW1/1 to WW1/5 which relates with the medical certificates, affidavit for age and slips regarding payment made by the respondent during the service. During the course of cross-examination, workwoman Kailasho Devi has stated that she has joined the enquiry proceedings and engaged a defence representative to represent her in defence. This witness has clearly accepted that enquiry was conducted properly and stated that she was not employed in handicapped quota which is against the averments made in the claim petition itself.

4. Management has submitted affidavit of Rajinder Kumar, Senior Clerk, CHI/Medical Northern Railway, Kalka, which is in the line of the facts alleged in the written statement. This witness was cross-examined by the learned AR of the workwoman. This witness has stated that the enquiry was conducted against the workwoman, which was not participated by him. This witness denied the suggestion that workwoman was not supplied the documents and list of witnesses during the course of enquiry. He has further stated that it is incorrect that she was not given opportunity to defend herself.

5. I have heard the learned AR of the workwoman Sh. R.K. Parmar and learned counsel of the management Sh. Rajesh Khurana at length and perused the file.

6. Learned AR of the work woman Sh. R.K. Parmar argued that claimant had been held guilty without proper enquiry and punished with the order of dismissal in spite of the unblemished service for more than 8 years. Learned AR further argued that if there was any fault, it was of the officials of the establishment and concerned doctor who examined the handicapped certification to the workwoman and find her eligible for the job as per advertisement. Learned AR further argued that the punishment of dismissal is in appropriate and respondent-establishment could not date to put the workwoman for criminal trial by lodging the F.I.R. against her for forging and conspiracy.

7. Learned counsel for the management argued that action of the disciplinary authority in passing the dismissal order is in commensurate to the gravity of misconduct proved against the workman. It is also submitted by the learned counsel for the management-bank that role of the Court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or finding arrived on the basis of the evidence available on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited to exceptional cases. The punishment imposed by the disciplinary authority cannot be subjected to judicial review. In this connection, learned counsel of the bank has drawn my attention towards the judgment of the Hon'ble apex court in the case of S.R. Tiwari Versus Union of India (2013(7) Scale Page 417) and in the case of Depot Manager, APSRTC Vs. Raghudha Shiv Shankar Prasad 2007(1) RSJ Page 331 and submitted that the workman is not entitled to any leniency.

8. There is no dispute that Section 11-A of the Act empowers this Tribunal to interfere with the quantum of punishment in appropriate cases(see decision of Hon'ble Apex Court in the case of Pepsu Road Transport Corporation Versus Rawel Singh, 2008 AIR (SCW) 2099; of Punjab & Haryana High Court in the case/s of Punjab National Bank Vs. The Presiding Officer, CGIT & another 2012(2) SLR 631; Harnek Singh Versus State of Haryana & others 2010(3) SLR 276 and Joginder Lal Versus The Presiding Officer, Labour Court, Ambala & another 1996 SCT 436. It is fairly settled that discretion is to be exercised judiciously in such cases where order of punishment is quite harsh & disproportionate to the gravity of misconduct of the official concerned on the basis of evidence on record.

9. Perusal of enquiry report, it is crystal clear that claimant/workwoman was served with the charge-sheets dated 11.01.1996 regarding the submission of bogus certificate in handicapped quota with the held of K.C. Sharma, then dealing Clerk from Senior DoPT Ambala. By her act of grave misconduct, she has committed fraud with the government in connivance of K.C. Sharma depicting her follower to maintain the integrity, exhibited lack of devotion in duty and acted in the manner of unbecoming railway servant thereby contravened Rule No.3(i), (ii) and (iii) of Railway Servant Conduct Rules, 1968. The enquiry officer A.B. Sharma has submitted his enquiry report running more than 12 pages holding that charge of false procurement of handicapped certificate with connivance of K.C. Sharma obtaining job in the railway-department as Safai Karamchari was held proved against the workwoman with the concluding lines with the observation that:-

“By above act, it is proved that Smt. Kailasho Devi has connived with Sh. K.C. Sharma and fake appointment was issued by fake method. Furthermore, the charges against charged-official is partially proved. All appointment papers were in the knowledge of APO/Ambala Sh. Santokh Singh and Sh. K.C. Sharma, dealing Clerk.”

10. Question which arises for consideration is whether punishment of termination is in proportionate to the charges proved against the charge-sheeted employee/workwoman. Considering the scope of judicial review on the quantum of punishment and referring to various cases in Jai Bhagwan Vs. Commissioner of Police & Ors., 2013(4) S.C.T. 607; (2013) 11 SCC 187, the Apex Court held as under:-

“What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order on punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that it so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court....”

11. Similarly, the Constitution Bench of the Supreme Court in State of Orissa and Oths. Vs. Vidyabhushan Mahapatra (1963) Supply 1 S.C.R. 648 opined that even if the charges which have been proved justified imposition of punishment of dismissal from service this Court may not exercised its power of judicial review. Thus, it is made clear by the Division Bench that power of judicial review is rare jurisdiction confirmed to the Tribunal as well as High Court which could be exercised in rare manner going thorough the facts and the gravity of the charges proved during the course

of enquiry by the management. Similarly, the Hon'ble Supreme Court in **Usha Breco Mazdoor Sangh Vs. Management of Usha Breco and Oths., Civil Appeal No.3551/2008 decided on 29.04.2008**, has held that:-

“It may not be a correct approach for a superior court to proceed on the premise that an Act is a beneficent legislation in favour of the management or the workmen. The provisions of the statute must be construed having regard to the tenor of the terms used by the Parliament. The court must construe that statutory provision with a view to uphold the object and purport of the Parliament. It is only in a case where there exists a grey area and the court feels difficulty in interpreting or in construing and applying the statute, the doctrine of beneficent construction can be taken recourse to. Even in cases where such a principle is resorted to, the same would not mean that the statute should be interpreted in a manner which would take it beyond the object and purport thereof.”

12. It is settled law that punishment of the penalty to be imposed by the disciplinary authority against the charge-sheeted official is to be commensurate with the gravity of alleged misconduct. Undoubtedly, an Industrial Tribunal in terms of Section 11-A of the Act exercises discretionary jurisdiction. Indisputably, discretion must be exercised judiciously and it cannot be based on whims and caprices and should be based to all relevant factors in mind in exercising such jurisdiction. The nature of the misconduct alleged the conduct of the parties the manner in which the enquiry proceedings had been conducted may be held to be relevant factor. A misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own merits and in given case when the doctrine of proportionality may be invoked

13. Perusal of charge framed against the charged-official Smt. Kailasho Devi is relevant for the purpose of deciding proportionality of the punishment. Charges framed and proved against the delinquent employee relates to the forged and handicapped medical certificate to obtain job in handicapped quota with the held and assistance of K.C. Sharma, dealing clerk and Santokh Singh, Clerk at the relevant time in APO/Ambala.

14. It would be not out of place to mention that workwoman is not put for trial in criminal case by the respondent-establishment because establishment of railway did not lodged a F.I.R. against the charged-employee. But it is pertinent to mention that drawing the disciplinary authority against the delinquent official. The Hon'ble Supreme Court in catena of case consequently has held that acquittal in a criminal case could be no bar for drawing up a disciplinary proceeding against the delinquent official. It is well settled principle of law that the yardstick and standard of rule in a criminal case is put from a criminal case while the standard of proof in a criminal case is proved beyond the reasonable doubt whereas in departmental proceeding it has to be proved the probabilities of the alleged charge done by the charge-sheeted employee. Reference may be made to the judgment of Hon'ble Supreme Court in the case of **Suresh Pathraila Vs. Oriental Bank of Commerce 2007(3) R.S.J. Vol.69, decided on 19.10.2005.**

15. The Order dated 19.11.2019 regarding the fairness of enquiry has become final in which it is held that enquiry has been conducted in reasonable manner after giving opportunity to workwoman. There is no dispute that workwoman was employed as Safai Karamchari at the relevant time by virtue of the forged and fabricated certificate of handicapped candidate with the connivance of K.C. Sharma and rendered her services for handsome time till the fraud deducted by the concerned authorities. Thus, workwoman was found guilty during the course of enquiry, resulting dismissal by the competent authority of the management. The Hon'ble Supreme Court in the case of **Regional Manager, U.P.SRTC vs. Hoti Lal, 2003(3) SCC, 605.** has held in paragraph 10 as under:-

“If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transaction or acts in a fiduciary capacity, the highest degree of integrity and trust worthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding order of dismissal.”

16. Having gone through the above facts and legal position, I am of the considered opinion that the punishment awarded to the workwoman for her misdeeds for obtaining false medical certificate of handicapped quota in order to attain employment of Safai Karamchari in Railway is of such nature which deserve maximum punishment of termination which is awarded in the present case. It cannot be said that the punishment awarded is disproportionate to the misdeeds conducted by her with the help of other railway officials as such, the action of the Divisional Railway Manager, Northern Railway, Ambala Cantt. in terminating the services of Kailasho Devi, claimant/workwoman is just and legal. The reference is answered accordingly.

17. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2019

का.आ. 2175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य बिहार ग्रामीण के बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना के पंचाट [संदर्भ संख्या 06 (C) of 2017] को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.12.2019 को प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th December, 2019

S.O. 2175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. I. D. Case No. 06 (C) of 2017] of the Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of Madhya Bihar Gramin Bank and their workmen, received by the Central Government on 17.12.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE**BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA****I.D. Case No. 06 (C) of 2017**

Between the management of Chairman, Madhya Bihar Gramin Bank, Head Office, Sri Vishnu Commercial Complex, Asochak Chowk, New Bypass Road, (NH-30) Patna-800016 And Their workman Sri Dudheshwar Ram, S/O- Late Babu Ram, Vill. & P.O- Sahar Telpa, P.S- Karpi, Dist.- Arwal, Pin-804419.

For the management : Sri Rabi Kant Prasad Srivastava, Senior Manager.

Sri Santosh Sharan Thakur, Asst. Manager.

For the workman : Sri B. Prasad, President, President Bihar Provincial Gramin Bank Employees Association.

Present : Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna.

AWARD**Patna, dt- 11th September, 2019**

1. The present case has been filed u/s 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workman who seeks relief of setting aside the order dated-18.05.2016 passed by the Ld Disciplinary Authority & confirmed by the Ld. Appellate Authority vide order dated-18.05.2016, reinstatement in the services of the Bank with all consequential benefits and payment of cost of Rs. 20000/- for contesting the dispute.
2. Matter was raised by the workman before the Assistant Labour Commissioner (Central), Patna vide application dated- 03.11.2016 which was received by the office (for short A.L.C (C), who a issued notice vide File No.- 1/29/2016/ ALC-PT dated- 8th December, 2016 to the concerned parties.
3. The Assistant Labour Commissioner (C) Patna held conciliation proceedings and tried his level best to settle the dispute but due to the non-conciliatory attitude of the management, the conciliation proceedings ended in failure.
4. After filing the dispute, a period of 45 days elapsed and accordingly, as per the provisions of Section 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010, an application was filed before this Tribunal.
5. Both parties appeared before this tribunal and management filed objection petition .
6. In the instant case a objection petition has been filed on behalf of the management on 17.01.2019 stating therein that in view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 and confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 the present I.D. Case is not maintainable and hence the same should be rejected.
7. A petition has also been filed on behalf of the workman on 14.02.2019 praying therein to withdraw the instant I.D. Case in view of the judgement of the Hon'ble Patna High Court and the workman himself want to withdraw the I.D. Case.
8. Heard both the parties.

9. Accordingly, In view of the petition dt-14.02.2019 filed by the workman, the instant I.D. Case is hereby disposed of as withdrawn and also being not maintainable in view of the aforesaid judgement of the Hon'ble Patna High Court. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

Dictated & Corrected by me.

11.09.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2019

का.आ. 2176.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य बिहार ग्रामीण के बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट [संदर्भ संख्या 6&7 (C) of 2014] को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.12.2019 को प्राप्त हुआ था।

[सं. एल-12025/01/2019-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 17th December, 2019

S.O. 2176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. I. D. Case No. 6 & 7 (C) of 2014] of the Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of Madhya Bihar Gramin Bank and their workmen, received by the Central Government on 17.12.2019.

[No. L-12025/01/2019-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No. 06 (C) of 2014

Between the management of Chairman, Madhya Bihar Gramin Bank, H.O- Meena Plaza, South of Museum, Patna-800001 and Their workmen (1) Sri Ram Kumar Ram, S/O- Late Baijnath Ram Vill.- Chaukipur, P.O- Chandwa, P.S- Udwant Nagar, Dist- Bhojpur (2) Sri Ajay Kumar, S/O- Sri Laxman Prasad, At.- Babu Bazar, Ara, P.O- Ara Town, Dist.- Bhojpur.

I.D. Case No. 07 (C) of 2014

Between the management of Chairman, Madhya Bihar Gramin Bank, H.O- Meena Plaza, South of Museum, Patna-800001 and Their workmen (1) Sri Ram Ishwar Singh, S/O- Sri Ram Sakal Singh, Vill.- Chakia, P.O- Chakia, P.S- Sikarahata, Dist.- Bhojpur At present Address:- Vill & P.O- Jitaura, P.S- Piro, Dist.- Bhojpur (2) Sri Sunil Rai, S/O- Sri Jitan Rai, Vill.- Sarfora, P.O- Jamodhi, P.S- Tarari, Dist.- Bhojpur. (3) Sri Ajay Kumar, S/O- Sri Hira Das, Vill.- Mishra Tola, Jail Road, P.S- Town Arrah, Dist.- Bhojpur.

For the management : Sri Rabi Kant Prasad Srivastava, Senior Manager.

Sri Santosh Sharan Thakur, Asst. Manager.

For the workman : Sri B. Prasad, President, President Bihar Provincial Gramin Bank Employees Association.

Present :- Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dt- 18th September, 2019.

1. Both the aforesaid cases have been filed u/s 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workmen who seek relief of reinstatement in the services of the Bank as a Part time Sweeper w.e.f 01.01.2012 with full back wages / regularization of services as a part time sweeper under 1/3rd scale wages of a subordinate staff, and for payment of cost of Rs. 10000/- for contesting the dispute.

2. As per the case of the workmen they raised Industrial Dispute before the Assistant Labour Commissioner (C), Patna vide application dt- 03.07.2014 who issued notice dt- 15.07.2014 to the concerned parties vide file no.- 1/70/2014/ALC-1 and another file no.- 1/71/2015/ALC-1. The Assistant Labour Commissioner (C), Patna held conciliation proceeding. As a period of 45 days elapsed with no sign of any settlement, the workmen filed an application as per the provisions of Section 2A (1) & (2) of the Industrial Disputes (Amendment) Act, 2010 in this tribunal. In the mean time the matter was also referred by the Central Government (Ministry of Labour / Shram Mantralaya) vide Notification No.- 12011/95/2014-IR(B-I) dt- 16.12.2014 and another is 12011/94/2014-IR(B-I) dt- 16.12.2014, upon which Reference Case No.- 01(C) of 2015 and 04(C) of 2015 were registered. Further by order dt- 11.06.2015, as in both the I.D Cases and Reference Cases the parties were same and the matter for adjudication was also the same, therefore, both the cases were made analogous.
3. Both parties appeared in both the cases before this tribunal and management filed written statement.
4. Further with the consent of the parties I.D. Case no.- 07(C) of 2014 was made analogous with I.D. Case No.- 06(C) of 2014. Later on by order dated- 11.06.2015 as the matter and parties were also the same therefore, the I.D. Cases were attached with the respective Reference Cases.
5. Later on 30.01.2018 a petition was filed by the management challenging the maintainability of the I.D.Cases in view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 dated- 22.11.2017.
6. Further on 26.08.2018 on the request and consent of both the parties the Reference Cases were separated from their respective I.D.Cases in view of the changed circumstances of the aforesaid judgement of the Hon'ble Patna High Court.
7. On 14.02.2019 a petition for withdrawal of the I.D.Cases was filed on behalf of the workmen in view of the judgement of the aforesaid judgement of the Hon'ble Patna High Court.
8. Heard both the parties.
9. In view of the petitions filed by the both the parties and in view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 which has been confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 and as well as in view of the withdrawal petition dt- 14.02.2019 filed by the workmen both the aforesaid I.D.Cases are not maintainable and accordingly and the workmen are allowed to withdraw there I.D.Cases as prayed for.
10. Accordingly both the I.D.Cases are disposed of as withdrawn and also being not maintainable in view of the aforesaid judgement of the Hon'ble Patna High Court. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

Dictated & Corrected by me.

18.09.2019

VISHWESHWAR NATH MISHRA, Presiding Officer